Mr Justice Clifford

SUPREME COURT OF THE UNITED STATES.

No. ~~238~~. 170

L. Q. RAWSON, B. AMSDEN, AND JAMES MOORE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 238.

L. Q. RAWSON, B. AMSDEN, AND JAMES MOORE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

INDEX TO RECORD.

	Original.	Print.
Præcipe for summons No. 991	1	1
Declaration	2	2
Summons and return	2	3
Præcipe for summons No. 992	5	4
Declaration	5	5
Summons and return	7	6
Præcipe for summons No. 993	9	7
Declaration	9	8
Summons and return	11	9
Motion to consolidate	13	10
Order—"—"	14	11
Plea	15	12
Plaintiffs' demurrer	17	13
Joinder in demurrer	18	14
Order sustaining demurrer	19	14
New plea	19	15
Replication to 2d plea	22	17
Demurrer to 1st, 3d, and 4th pleas	23	17
Order overruling demurrer	25	19
Replication to 1st, 3d, and 4th pleas	25	19
Trial and verdict	27	21
Motion for new trial	28	21
Order overruling same	29	22
Judgment	30	22
Bill of exceptions	30	23
Exhibits A, abstract of duties, &c	35	27
" B, bond for duties	37	28
" D and F, collector's receipts	39	28
" C, draft	39	29
" E, letter of Rawson	39	29

	Original.	Print
Bond of plaintiffs in error	41	29
Writ of error	43	30
Citation	45	31
Certificate of clerk	47	32

1 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

At a stated term of the circuit court of the United States for the northern district of Ohio, in the seventh circuit, begun and held at the city of Cleveland, in said district, on the second Tuesday in November, being the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States of America the eighty-sixth—

Present: The honorable Hiram V. Willson, district judge.

Among the proceedings then and there had were the following, to wit:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } No. 991. In debt.

Be it remembered that heretofore, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and sixty-one, came the said plaintiff, by its attorney, and filed in the clerk's office of said court its precipe and declaration in debt, in the words and figures following, to wit:

Precipe.

In the circuit court of the United States.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } Action debt. Damages, $3,000.

Issue a summons in the above entitled action. Endorse: "Suit bro't on bond executed by defendants, dated February 4, 1859, for $3,374, conditioned for the payment, on or before the expiration of three years, to be computed from the 1st day of June, 1857, being the date of the original importa of 682 bars R. R. iron, to the collector of the port of Sandusky for the time being, of $1,687 80, or the amount
2 of duty on said iron. Debt, $3,374; damages, $3,000. Precise amount due $1,687 80, and interest from June 1, 1860.

"R. F. PAINE, *U. S. Attorney.*"

Said declaration is in the words and figures following, to wit:

Declaration.

[In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The United States of America, by R. F. Paine, United States district attorney for the northern district of Ohio, complains of L. Q. Rawson, B. Amsden, and James Moore, who reside in the said northern district of Ohio, and within the jurisdiction of this court, in a plea of debt, for that whereas, heretofore, to wit, on the fourth day of February, one thousand eight hundred and fifty-nine, to wit, at Sandusky, in the said northern district of Ohio, the said defendants made their certain writing obligatory of that date, sealed with their seals, and now here to the court shown, and then and there delivered the same to the plaintiffs, and thereby acknowledged themselves (the said L. Q. French, as principal, and B. Amsden and James Moore, as sureties) to be held and firmly bound unto the United States in the sum of three thousand three hundred and seventy-four dollars, (3,374,) to be paid to the United States, for the payment whereof they thereby bound themselves, their heirs, executors, administrators, and assigns, jointly and severally; which said writing obligatory was and is subject to a condition thereunder written, whereby it is provided "that if the above bounden principals, or either of them, or either of their heirs, executors, administrators, or assigns, shall, on or before the expiration of three years, to be computed from the 1st day of June, 1857, being the date of the original importation of the goods, wares, and merchandise enumerated herein, well and truly pay, or cause to be paid, unto the collector of the customs for the port of Sandusky for the time being, sixteen hundred eighty-seven $\frac{80}{100}$ dollars, or the amount of the duty to be ascertained as due and owing on goods, wares, and merchandise entered this day for rewarehousing by L. Q. Rawson, consisting of six hundred and eighty-two bars of R. R. iron; or shall, on or before the expiration of the three years aforesaid, in the mode prescribed by law, withdraw the said goods, wares, or
3 merchandise from the warehouse at the port of Sandusky, O., then this obligation to be void, otherwise to remain in full force and virtue." And the plaintiff says that the said defendants did not, nor did either of them, nor did their, or any, or either of their heirs, executors, administrators, or assigns, on or before the expiration of three years, to be computed from the first day of June, 1857, being the date of the original importation of said goods and wares and merchandise enumerated therein, well and truly pay, or cause to be paid, unto the collector of the customs for the port of Sandusky for the time being, sixteen hundred eighty-seven $\frac{80}{100}$ dollars, or the amount of duty ascertained as due and owing on goods, wares, and merchandise entered on said day for rewarehousing by said L. Q. Rawson, consisting of six hundred and eighty-two bars of R. R. iron; nor did they, or either of them, on or before the expiration of the three years aforesaid, in the mode prescribed by law, withdraw the said goods,

wares, and merchandise from the warehouse at the port of Sandusky, O. Wherefore the plaintiff says an action hath accrued to the plaintiff to have and demand of the said defendant the aforesaid sum of three thousand three hundred seventy-four dollars, according to the tenor and effect of said writing obligatory and the conditions of the same. Yet the said defendants, though often requested, have not paid said debt, nor any part thereof, to the damage of the plaintiff of three thousand dollars, and thereupon the plaintiffs brings suit.

By R. F. PAINE,
U. S. District Attorney for the Northern District of Ohio.

And thereupon, on said second day of July, in the said year of our Lord one thousand eight hundred and sixty-one, was issued, out of the clerk's office of said court, a writ of summons, in the words and figures following, to wit:

Summons.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon L. Q. Rawson, B. Amsden, and James Moore, if they be found in your district, to be and appear in the circuit court of the United States for the northern district of Ohio, aforesaid, at Cleveland, on the sixteenth day of July
4 instant, to answer unto the United States of America of a plea of debt--damages three thousand dollars ($3,000.) And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the United
[SEAL.] States, this second day of July, A. D. 1861, and in the 85th year of the independence of the United States of America.

F. W. GREEN, *Clerk.*

Upon which writ was the following endorsement, to wit: "Suit brought on bond executed by defendants, dated February 4, 1859, for $3,374, conditioned for the payment, on or before the expiration of three years, to be computed from the 1st day of June, 1857, being the date of the original importation of 682 bars R. R. iron, to the collector of the port of Sandusky for the time being, of $1,687 80, or the amount of duty on said iron. Debt, $3,374; damages, $3,000. Precise amount due $1,687 80, and interest from June 1, 1860.

"R. F. PAINE, *U. S. Attorney.*"

And afterwards, to wit, on the tenth day of July, in said year first above mentioned, the said writ of summons was returned into the clerk's office of said court, with the marshal's return endorsed thereon, in the words and figures following, to wit:

Return of summons.

"Received the within summons July 5, 1861, and personally served the same by delivering a true copy of the same to each of the defendants—L. R. Rawson, James Moore, and B. Amsden—this 8th day of July, 1861.

"EARL BILL,
"*U. S. Marshal for the Northern District of Ohio,*
"By D. S. CAMFIELD,
"*Dep. U. S. M.*"

5 THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, JAMES MOORE, and B. AMSDEN. } No. 992. Debt.

Be it remembered that heretofore, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and sixty-one, came the said plaintiff, by its attorney, and filed in the clerk's office of said its precipe for summons and its declaration in debt, in the words and figures following, to wit:

Precipe.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, JAMES MOORE, and B. AMSDEN. } Action of debt. Damages, $3,000.

Issue summons in the above entitled action. Endorse: "Suit brought on bond for $3,836 64, executed by the defendants to the plaintiffs, dated 9th Febr'y, 1859, conditioned for the payment, on or before the expiration of three years, to be computed from the 11th day of December, 1857, being the date of the original importation, unto the collector of customs for the port of Sandusky, Ohio, for the time being, nineteen hundred and eighteenand $\frac{32}{100}$ dollars, or the amount of duty due and owing on 1,264 bars of railroad iron, entered for warehousing by L. Q. Rawson. Dam-ages, $3,500. Precise amount due plaintiff $1,918 32, with interest from December 11, 1860.

"R. F. PAINE,
"*U. S. District Attorney for Northern District of Ohio.*"

1143

Said declaration is in the words and figures following, to wit:

Declaration.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The United States of America, by R. F. Paine, United States district attorney for the northern district of Ohio, complain of L. Q. Rawson, James Moore, and B. Amsden, who reside in the said northern district of Ohio, and within the jurisdiction of this court, in a plea of debt, for that whereas, heretofore, to wit, on the ninth day of February, 1859, to wit, at Sandusky, in said northern
6 district of Ohio, the said defendants made their certain writing obligatory of that date, sealed with their seals, and now here to the court shown, and then and there delivered the same to the plaintiffs, and thereby acknowledged themselves (the said L. Q. Rawson, as principal, and James Moore and B. Amsden, as sureties) to be held and firmly bound unto the United States of America in the sum of three thousand eight hundred and thirty-six dollars and sixty-four cents, to be paid to the United States, for the payment whereof they thereby bound themselves, their heirs, executors, administrators, and assigns, jointly and severally; which said writing obligatory was and is subject to a certain condition thereunder written, whereby it is provided "that if the above bounden principal, or either of them, or either of their heirs, executors, administrators, or assigns, shall, on or before the expiration of three years, to be computed from the 11th day of December, 1857, being the date of the original importation of the goods, wares, and merchandise enumerated herein, well and truly pay, or cause to be paid, unto the collector of customs for the port of Sandusky, Ohio, for the time being, nineteen hundred and eighteen $\frac{32}{100}$ dollars, or the amount of duty to be ascertained as due and owing on goods, wares, and merchandise entered this day for rewarehousing by L. Q. Rawson, consisting of twelve hundred and sixty four bars of railroad iron; or shall, on or before the expiration of three years aforesaid, in the mode prescribed by law, withdraw the said goods, wares, or merchandise from the warehouse at the port of Sandusky, Ohio, then this obligation to be void, otherwise to remain in full force and virtue." And the plaintiffs aver that the said defendants did not, nor did either of them, nor did their, or any, or either of their heirs, executors, administrators, or assigns, on or before the expiration of three years, to be computed from the 11th day of December, 1857, being the date of the original importation of said goods, wares, and merchandise enumerated therein, well and truly pay, or cause to be paid, unto the collector of customs for the port of Sandusky, Ohio, for the time being, nineteen hundred and eighteen and $\frac{32}{100}$ dollars, or the amount of duty to be ascertained as due and owing on goods, wares, and merchandise entered on said day for rewarehousing by L. Q. Rawson, consisting of twelve

7 hundred and sixty-four bars R. R. iron; nor did they, or either, or any of them, on or before the expiration of the three years aforesaid, in the mode prescribed by law, withdraw the said goods, wares, or merchandise from the warehouse at the port of Sandusky, Ohio; nor have the said defendants, or any, or either of them, or any other person, since paid to the plaintiffs said sum of nineteen hundred and eighteen and $\frac{32}{100}$ dollars, or the amount of duty due and owing on said twelve hundred and sixty-four bars railroad iron, or any part thereof. Wherefore the plaintiffs say that an action has accrued to the plaintiffs to have and demand of the said defendants the said sum of three thousand eight hundred and thirty-six dollars and sixty-four cents debt, according to the tenor and effect of said writing obligatory and the condition of the same. Yet the said defendants, though often requested, have not paid said debt, nor any part thereof, to the damage of the said plaintiffs of thirty-five hundred dollars, and thereupon they bring suit.

By R. F. PAINE,
U. S. Att'y for Northern District of Ohio.

And thereupon, on said third day of July, in the year of our Lord one thousand eight hundred and sixty-one, was issued, out of the clerk's office of said court, a writ of summons, in the words and figures following, to wit:

Summons.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon L. Q. Rawson, James Moore, and B. Amsden, if they be found in your district, to be and appear in the circuit court of the United States for the northern district of Ohio, aforesaid, at Cleveland, on the seventeenth (17th) day of July instant, to answer unto the United States of America of a plea of debt—damages three thousand five hundred dollars ($3,500.) And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the
8 United States, this third day of July, A. D. 1861, and in the eighty-fifth year of the independence of the United States of America.

[SEAL.] F. W. GREEN, *Clerk.*

Upon which writ of summons was the following endorsement, to wit:

"Suit brought on bond for $3,836 64, executed by the defendants to the plaintiffs, dated 9th February, 1859, conditioned for the payment, on or before the expiration of three years, to be computed from the 11th day of December, 1857, being the date of the original im-

portation, unto the collector of customs for the port of Sandusky, Ohio, for the time being, nineteen hundred and eighteen and $\frac{32}{100}$ dollars, or the amount of duty *duty* and owing on 1,264 bars railroad iron, entered for rewarehousing by L. Q. Rawson. Damages, $3,500. Precise amount due plaintiffs $1,918 32, with interest from December 11, 1860.

"R. F. PAINE,
"*U. S. District Attorney for Northern District of Ohio.*"

Return of summons.

And afterwards, to wit, on the tenth day of July, in said last-mentioned year, was returned to said clerk's office said writ of summons, with the marshal's return endorsed thereon, in the words and figures following, to wit: "Received the within summons July 5th, 1861, and personally served the same by delivering a true copy of the same to each of the defendants—L. Q. Rawson, James Moore, and B. Amsden—this 8th day of July, 1861.

"EARL BILL,
"*U. S. Marshal for Northern District of Ohio.*
"By D. S. CAMFIELD,
"*Dep. U. S. M.*"

9 THE UNITED STATES OF AMERICA *vs.* L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } No. 993. Debt.

Be it remembered that heretofore, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and sixty-one, came the said plaintiff, by its attorney, and filed in the clerk's office of said court its precipe for a writ of summons and declaration in debt, in the words and figures following, to wit:

Precipe.

In the circuit court.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA *vs.* L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } Debt. Damages, $5,000.

Issue a summons in the above-entitled action. Endorse: "Suit bro't on bond executed by defendants to the plaintiffs for $5,110 56, dated Feb'y 4, 1859, conditioned for the payment, on or before the expiration of three years from the sixth day of August, 1857, being the date of the original importation of 1,486 bars of railroad iron, unto the collector of customs for the port of Sandusky for the time

being, of two thousand five hundred and fifty-five dollars and twenty-eight cents, or the amount of duty to be ascertained as due and owing on said railroad iron on the withdrawal of the same from the warehouse at the port of Sandusky, in the mode prescribed by law, within said three years. Debt, $5,110 56; damages, $5,000. Precise amount due $2,555 28, with interest from August 6, 1860.

"R. F. PAINE,
"*U. S. District Attorney.*"

To the CLERK of said court.

Said declaration is in the words and figures following, to wit:

Declaration.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The United States of America, by R. F. Paine, United States
10 district attorney for the northern district of Ohio, complain of L. Q. Rawson, B. Amsden, and James Moore, who reside in the said northern district, and within the jurisdiction of this court, in a plea of debt, for that whereas heretofore, to wit, on the fourth day of February, eighteen hundred and fifty-nine, to wit, at Sandusky, in the said northern district of Ohio, the said defendants made their certain writing obligatory of that date, sealed with their seals, and now here to the court shown, and then and there delivered the same to the plaintiffs, and thereby acknowledged themselves (the said L. Q. Rawson, as principal, and James Moore and B. Amsden, as sureties) to be held and firmly bound unto the United States of America in the sum of five thousand one hundred and ten dollars and fifty-six cents, to be paid to the United States, for the payment whereof they thereby bound themselves, their heirs, executors, administrators, and assigns, jointly and severally; which said writing obligatory was and is subject to a condition thereunder written, whereby it is provided "that if the above bounden principal, his heirs, executors, administrators, or assigns, shall, on or before the expiration of three years, to be computed from the sixth day of August, eighteen hundred and fifty-seven, being the date of the original importation of the goods, wares, and merchandise enumerated herein, well and truly pay, or cause to be paid, unto the collector of the customs for the port of Sandusky for the time being, two thousand five hundred and fifty-five dollars and twenty-eight cents, or the amount of duty to be ascertained as due and owing on goods, wares, and merchandise entered this day for rewarehousing by L. Q. Rawson, consisting of fourteen hundred and eighty-six bars of railroad iron, or shall, on or before the expiration of three years aforesaid, in the mode prescribed by law, withdraw the said goods, wares, and merchandise from the warehouse at the port of Sandusky, then this obligation to be void, otherwise to remain in full force and virtue."

And the plaintiffs aver that the said defendants did not, nor did either of them, nor did their, or any, or either of their heirs, executors, administrators, or assigns, on or before the expiration of three years, to be computed from the sixth day of August, eighteen hundred and fifty-seven, being the date of the original importation of the said goods, wares, and merchandise enumerated therein, well and truly pay, or cause to be paid, unto the collector of the customs for the port of Sandusky for the time being, two thousand five hundred fifty-five dollars and twenty-eight cents, or the amount of duty ascertained as due and owing on the said goods, wares, and merchandise entered on said day for rewarehousing by said L. Q. Rawson, consisting of fourteen hundred and eighty-six bars of railroad iron; nor did they, or any, or either of them, on or before the expiration of the three years aforesaid, in the mode prescribed by law, withdraw the said goods, wares, and merchandise from the warehouse at the port of Sandusky. Wherefore the plaintiffs say an action hath accrued to the plaintiffs to have and demand of the said defendants the aforesaid sum of five thousand one hundred and ten dollars and fifty-six cents debt, according to the tenor and effect of the said writing obligatory and the condition of the same. Yet the said defendants, though often requested, have not paid said debt, nor any part thereof, to the damage of the said plaintiffs of five thousand dollars, and thereupon the plaintiffs bring suit, &c.

R. F. PAINE,
U. S. District Attorney for the Northern District of Ohio.

And thereupon, on the third day of July, in the year of our Lord one thousand eight hundred and sixty-one, was issued, out of the clerk's office of said court, a writ of summons, in the words and figures following, to wit:

Summons.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon L. Q. Rawson, B. Amsden, and James Moore, if they be found in your district, to be and appear in the circuit court of the United States for the northern district of Ohio, aforesaid, at Cleveland, on the seventeenth day of July instant, to answer unto the United States of America in a plea of debt—damages five thousand dollars ($5,000 00.) And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this third day of July, A. D. 1861, and in the 85th year of the independence of the United States of America.

[SEAL.]

F. W. GREEN, *Clerk.*

Upon which writ of summons was an endorsement in the words and figures following, to wit:

"Suit brought on bond executed by defendants to the plaintiffs for $5,110 56, dated February 4, 1859, conditioned for the payment, on or before the expiration of three years from the sixth day of August, 1857, being the date of the original importation of 1,486 bars of railroad iron, unto the collector of the customs for the port of Sandusky for the time being, of two thousand five hundred and fifty-five dollars and twenty-eight cents, or the amount of duty to be ascertained as due and owing on said railroad iron on the withdrawal of the same from the warehouse at the port of Sandusky, in the mode prescribed by law, within said three years. Debt, $5,110 56; damages, $5,000 00. Precise amount due $2,555 28, with interest from August 6, 1860."

R. F. PAINE, *U. S. District Attorney.*

And afterwards, to wit, on the tenth day of July, in said year of our Lord one thousand eight hundred and sixty-one, said writ was returned into the clerk's office of said court, with the marshal's return endorsed thereon, in the words and figures following, to wit:

Return of summons.

"Received the within summons July 5th, 1861, and personally served the same by delivering a true copy of the same to each of the defendants—L. Q. Rawson, James Moore, and B. Amsden—this 8th day of July, 1861.

"EARL BILL,
"*U. S. Marshal for Northern District of Ohio,*
"By D. S. CAMFIELD,
"*Dep. U. S. Marshal.*"

13 And afterwards, to wit, on the fifth day of August, in the year of our Lord one thousand eight hundred and sixty-one, being at the stated July term of said court, begun and held on the ninth day of July in said year, came the parties to the above entitled causes; and on motion of the said defendants, by their counsel, the rule for plea therein was extended to the fifteenth of August.

And afterwards, to wit, on the fifteenth day of August, in the year one thousand eight hundred and sixty-one, being at the said July term of said last above mentioned, came the said defendants in the above-entitled causes and filed their motion to consolidate the same, in the words and figures following, to wit:

Motion to consolidate.

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES OF AMERICA,
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } No. 991. In debt.

THE UNITED STATES OF AMERICA
vs.
THE SAME DEFENDANTS. } No. 992. Same.

THE UNITED STATES OF AMERICA
vs.
THE SAME DEFENDANTS. } No. 993. Same.

The defendants move said court to consolidate into one suit the above entitled three causes for the following reasons, to wit:

1. That said suits are all brought by the same plaintiff against the same defendants for causes of action which might and should have been included in one suit.

2. That said bringing of said three separate suits will unreasonably, vexatiously, and unnecessarily increase the costs of said proceedings, because said suits might and should have been joined in one suit, thereby making but one bill of costs.

3. That said suits are founded upon three bonds given to secure the payment of duties on railroad iron, and made payable to
14 the collector of the port of Sandusky, Ohio, and the defendants have made payments to said collector on said duties generally without specifying any particular bond, and said payments are a defence to all said bonds together, and defendants cannot well plead said payments in each suit separately.

R. P. BUCKLAND, *Att'y for Def'ts.*

AUGUST 9, 1861.

And afterwards, to wit, on the seventeenth day of August in said year, and at the term of said court last above mentioned, the following order to consolidate said causes was made and entered, in the words and figures following, to wit:

Order to consolidate.

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } Nos. 991, 992, 993. In debt.

These causes came on to be heard this day upon the defendants' motion to consolidate the said several causes into one suit, and were argued by counsel. On consideration whereof the court order that the said three causes of action be consolidated into one action for trial, and the court order that the three declarations filed in said action stand for three different counts in the said consolidated action, the same as if joined in one declaration. And it is further ordered that the said defendants have until the 27th day of August, 1861, to plead to said action so consolidated, and that the costs abide the result of said consolidated action.

And afterwards, to wit, on the 26th day of August, in the year last aforesaid, came the said defendants, and filed in the clerk's office of this court their plea, in the words and figures following, to wit:

15 *Plea.*

Circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE.
} In debt. Nos. 991, 992, 993, consolidated.

And the said defendants, by R. P. Buckland, their attorney, come and defend the wrong and injury, &c., and say that the plaintiff ought not to have or maintain the aforesaid action against them in manner and form and for the sums claimed and demanded by the plaintiff, because they say that said three bonds declared upon by the plaintiff in this action were given to secure the payment of the duties which should be ascertained to be due and owing to the plaintiff on certain goods, wares, and merchandise, consisting of railroad iron bars entered by the said L. Q. Rawson for rewarehousing at the port of Sandusky, Ohio, as specified in said bonds; that said defendants also gave to the plaintiff seven other bonds to secure the payment of the duties which should be ascertained to be due and owing to the plaintiff on certain other goods, wares, and merchandise, consisting of railroad iron bars, entered by said L. Q. Rawson for rewarehousing at said port of Sandusky; that by the conditions of said bonds the defendants were bound to pay said duties to the collector of customs for the said port of Sandusky for the time being within the several periods specified in the said several bonds respectively; that the duties ascertained to be due and owing to the plaintiffs on all the goods, wares, and merchandise specified in all of said bonds amount to the sum of seventeen thousand nine hundred thirty-four ($17,934) dollars, and no more; that after said bonds were given, and before the time limited in the condition of said bonds for the payment of said duties, the defendants paid to the collector of the customs for the said port of Sandusky, on the duties specified in said bonds, the following sums, to wit: On

16 the 28th day of January, A. D. 1859, the sum of four thousand dollars, ($4,000;) on the 9th day of July, A. D. 1859, the sum of seven thousand five hundred dollars, ($7,500,) and on the 11th day of July, A. D. 1859, the sum of twenty-five hundred dollars, ($2,500,) making in all the sum of fourteen thousand dollars ($14,000) paid on said duties, and leaving the sum of three thousand nine hundred and thirty-four dollars ($3,934) only due to plaintiffs thereon; and defendants say that all the duties on the said goods, wares, and merchandise mentioned in said three bonds declared upon by the plaintiff in this action were paid at the times aforesaid, except the said sum of three thousand nine hundred and thirty-four ($3,934) dollars; that the duty on the goods, wares, and merchandise mentioned in the said bond declared upon by the plaintiff conditioned for the payment sixteen hundred eighty-seven $\frac{80}{100}$ dollars, or the amount of the duty to be ascertained as due and owing on the goods, wares,

and merchandise mentioned in said bond, consisting of six hundred eighty-two bars railroad iron was ascertained to be and was the sum of thirteen hundred forty-nine $\frac{74}{100}$ dollars, and no more. And this said defendants are ready to verify.

Wherefore the defendants pray judgment if the said plaintiff ought to have or maintain said action thereof against them, except for the said sum of three thousand nine hundred and thirty-four dollars.

R. P. BUCKLAND,
Attorney for Defendants.

L. Q. Rawson, one of the above-named defendants, being duly sworn, says that the matters and things in the foregoing plea contained are true.

L. Q. RAWSON.

Subscribed in my presence, and sworn to before me this 26th day of August, A. D. 1861.

[NOTARIAL SEAL.] R. W. B. McLELLAN,
Notary Public.

17 And afterwards, to wit, on the 19th day of September, in the year last aforesaid, came the plaintiff, by its attorney, and filed in the clerk's office of said court its demurrer to the plea of said defendants, in the words and figures following, to wit:

Demurrer to plea.

Circuit court of the United States.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } Nos. 991, 992, and 993. In debt.

The plaintiffs, by R. F. Paine, U. S. attorney, say that the said plea of the said defendants and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said plaintiffs from having their aforesaid action thereof against the defendants, and the plaintiffs are not bound by law to answer the same; and this the said plaintiffs are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the plaintiffs pray judgment, and their debts and damages aforesaid, to be adjudged to them. And the plaintiffs, according to the form of the statute in such case made and provided, states and shows here the following causes of demurrer to said plea—that is to say:

1. The said plea is to the whole declaration, and does not answer or cover the whole of each action therein stated.

2. There is not in the introductory part of the plea any allegation or statement showing that the same is meant to be applied or pleaded

to any particular part only of the said declaration, but the same in the introductory part thereof purports and professes to be a plea in bar to the whole action of the plaintiffs; nevertheless, the said plea contains matter which, if true, constitutes an answer to only a part of the amount of the damages claimed; and said plea does not contain or show any matter in denial or in confession and avoidance of either of the causes of action in said declaration mentioned.

3. Said plea does not state facts which are sufficient for a
18 defence to either of the counts in said declaration.

4. Said plea is double, and attempts to set forth two defences, neither of which are stated with sufficient certainty.

5. Said plea does not state the time, the amount, or condition of the seven other bonds which the defendants allege they gave to the plaintiffs, nor does the plea allege that said bonds have been paid or the condition performed.

6. Said plea does not state by whom, or how, the amount of said duties were ascertained.

7. Said plea does not allege a performance of the condition of either of said bonds, and the said plea is inartificially pleaded, and in other respects uncertain, informal, and insufficient.

R. F. PAINE, *U. S. District Attorney.*

And afterwards, on the nineteenth day of September, in the year last aforesaid, came the defendants, by their attorney, and filed, in the clerk's office of said court, their joinder in demurrer, in the words and figures following:

Joinder in demurrer.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } In debt.

And the said defendants, by Ralph P. Buckland, their attorney, say that their said plea by them above pleaded, and the matters therein contained, in manner and form, as the same are above pleaded and set forth, are sufficient in law; and the said defendants are ready to verify and prove the same when, where, and in such manner, as the court here shall direct and award.

R. P. BUCKLAND, *Attorney for Defendants.*

19 *Order sustaining pl'ff's demurrer.*

And afterwards, to wit, on the twenty-eighth day of September, in the year and at the term of the said court last aforesaid, this cause

came on to be heard upon the plaintiffs' demurrer to the defendants' plea, and was argued by counsel; whereupon the court, being fully advised in the premises, doth consider that the said plea is not sufficient in law to bar the said plaintiffs of their said action, and doth order that said demurrer be, and the same is hereby, sustained; and leave is granted to the said defendants to file a new plea within twenty days from this date.

And afterwards, to wit, on the eighteenth day of October, in the year last aforesaid, came the said defendants, by their attorneys, and filed, in the clerk's office of said court, their plea, in the words and figures following, to wit:

New plea.

In circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } In debt.

1st. And the defendants, as to the count No. 991 on said bond for the sum of $3,374, as to the sum of $338 06, parcel of the sum of $1,687 80, in the condition of said bond mentioned, and as to all of said bond, excepting only the sum of $1,349 74, parcel of the said sum of $1,687 80 mentioned in the condition of said bond, says that the plaintiff ought not to have or maintain its action aforesaid against them, because they say that, after the delivery of said bond, to wit, on the 1st day of June, A. D. 1860, at the northern district aforesaid, the amount of the duties due and owing to the plaintiff on account of the said 682 bars of railroad iron was ascertained, and that the said amount so ascertained was the sum of $1,349 74, and no more, and was not the sum of $1,687 80. And this the defendants are ready to verify. Wherefore they pray judgment if the said plain-
20 tiff, as to the said sum of $338 06l parce, of the said sum in the said bond and in its condition mentioned, ought to have or maintain its action aforesaid.

2d. And the defendants, as to the count No. 992 on said bond for the sum of $3,836 64 conditioned for the payment of $1,918 32 in said declaration mentioned, says that the plaintiff ought not to have or maintain its action aforesaid against them, because they say that, after the said sum of $1,918 32, mentioned in said condition, became due and payable, to wit, on the 11th day of December, 1860, to wit, at said northern district, the said Rawson paid to the collector of customs for the port of Sandusky, Ohio, the said sum of $1,918 32, being the amount of duty then due and owing on the said 1,264 bars of railroad iron, in the condition of said bond mentioned. And

this they are ready to verify. Wherefore they pray judgment if plaintiff ought to have or maintain its action aforesaid against them on this count in said declaration mentioned.

3d. And the defendants, for a further plea in this behalf, by leave of the court for that purpose being first had and obtained, as to all of the said counts in said declaration, say that, at the time of the commencement of this suit, there was due and owing from the said defendants to the said plaintiff upon said writings obligatory by the said conditions thereof for the principal and interest in the said conditions mentioned, a certain sum of money, to wit, the sum of $5,823 34. And defendants further say that, before and at the time of the commencement of this suit, to wit, on the 1st day of June, 1860, at said northern district, the plaintiff was and still is indebted to said defendants in the sum of $1,889 80 for money then and there had and received by the plaintiff to and for the use of defendants; which said sum of money so due and owing from the said plaintiff to the said defendants is wholly unpaid; and which said sum of money so due and owing from the said plaintiff to the said defendants, as aforesaid, they the said defendants are ready and willing and offer to set off and allow against the said sum of money so remaining due and
21 payable. And defendants aver that, before the commencement of this suit, their said claim for money so had and received was submitted to the consideration of the accounting officer of the treasury of the United States and was rejected. And this they are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain its aforesaid action thereof for the sum of $1,889 80, parcel of the said sum of $5,823 34 claimed to be due and payable to said plaintiff in its declaration.

4th. And the defendants, for a further plea in this behalf, by leave of the court for that purpose being first had and obtained, as to the sum of $1,889 80 in the said counts in said declaration contained, say that the said plaintiff ought not to have or maintain its said action against them as to said sum of $1,889 80, part of the sum claimed, because they say that the said defendants, on the 1st day June, 1860, paid to the said plaintiff, to wit, at Sandusky, the said sum of $1,889 80, being a portion of the sums of the writings obligatory set forth in the plaintiff's declaration. And this they are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his said action against them for the sum of $1,889 80, parcel of the said sum of $6,161 66 claimed to be due and payable to the said plaintiff in its said declaration.

HITCHCOCK, MASON & ESTEP,
Attorneys for Defendants.

James Moore, one of the above-named defendants, being duly sworn, says that the matters and things in the foregoing pleas contained are true, as he verily believes.

JAMES MOORE.

Subscribed in my presence and sworn to before me this 17th day of October, 1861.

[NOTARIAL SEAL.] R. W. B. McLELLAN,
Notary Public.

22 And afterwards, to wit, on the twenty-eighth day of October, in the year last aforesaid, came the plaintiff, by its attorney, and filed in the clerk's office of this court its replication to the *second* plea of defendants, and *and* demurrer to the first, third, and fourth pleas of said defendants in the words and figures following, to wit:

Replication to second plea.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } In debt. Replication.

And the said plaintiffs as to the plea of the said defendants *secondly* above pleaded, say that they ought to be barred or precluded from having their said action against the said defendants, because they say that the said Rawson did not pay to the collector of customs for the port of Sandusky, Ohio, the said sum of $1,918 32 being the amount of duty then due and owing on said 1,264 bars of railroad iron in the condition of said bond, in manner and form as the said defendants have above in their said plea in that behalf alleged, and this the plaintiffs pray may be enquired of by the country, &c.

R. F. PAINE, *U. S. Att'y.*

Demurrer to 1st, 3d & 4th pleas.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } In debt. Demurrer.

And the said plaintiffs as to the said plea of the said defendants by them *firstly* above pleaded, say that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs,

from having or maintaining their aforesaid action thereof
23 against the said defendants, and that the plaintiffs are not bound by law to answer the same, and this the plaintiffs are ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof to be adjudged to them, and the said plaintiffs state and show to the court here the following causes of demurrer to said first plea:

First. Said plea does not answer the whole cause of action set forth in the said count.

Second. Said plea does not show by whom, or how, the amount of the duties due and owing to the plaintiff, on account of the 682 bars of railroad iron, was ascertained.

Third. Said plea does not show that said amount of duties were legally fixed or ascertained by any person authorized to fix or ascertain the same.

Fourth. Said plea does not show that the defendants, either before, at the time of, or after said duties were ascertained, paid the same; nor does said plea aver that the defendants have performed the condition of said bond.

Fifth. Said plea is, in other respects, uncertain, informal, and insufficient.

And the said plaintiffs, as to the said plea of the said defendants by them *thirdly* above pleaded, say that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendants; and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify. Wherefore, by reason of the insufficiency of said plea in this behalf, the said plaintiffs pray judgment, and their debts aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them. And
the plaintiffs state and show to the court here the following
24 causes of demurrer to said *third* plea:

First. Said plea purports to be an answer to all the counts in said declaration, and the same does not contain a defense to the whole of said counts, nor to any one of them.

Second. Said plea does not state that the defendants performed the condition of all, any, or either of said bonds or writings obligatory, described in the declaration; nor does said plea state that the defendants paid the duties therein mentioned, nor the debts therein mentioned.

Third. Said plea sets forth a cause of action of a different nature from the causes of action mentioned in the declaration—one which cannot be set off.

Fourth. Said plea is, other respects, uncertain, informal, and insufficient.

And the said plaintiffs, as to the said plea of the said defendants by them *fourthly* above pleaded, say that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude the said plaintiff from having or maintaining their action, aforesaid, against the said defendants, and that the said plaintiffs are not bound by law to answer; and this they, the said plaintiffs, are ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment and their debts aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them. And the plaintiffs state and show to the court here the following causes of demurrer to the said *fourth* plea:

First. Said plea does not answer all the counts in said declaration, nor does the same contain a defence to the whole of said action.

Second. Said plea does not allege a performance of the conditions of said bonds, or of any, or either of them; nor does it state any defence to the causes of action in the declaration contained, or to any or either of them.

Third. Said plea is, in other respects, uncertain, informal, and insufficient.

By R. F. PAINE.

25 *Order overruling pl'ff's demurrer.*

And afterwards, to wit, on the second day of December, in the year one thousand eight hundred and sixty-one, and at the stated term of said court, begun and held on the second Tuesday of November, in said year: "This cause came on to be heard at this term upon the plaintiff's demurrer to the *first*, *third*, and *fourth* pleas of the said defendant, and was argued by counsel; and the court being fully advised in the premises doth consider that the said demurrer is not well taken, and doth overrule the same. Whereupon, on motion of the district attorney appearing in behalf of the United States, he has leave to file replication to said first, third, and fourth pleas, *instanter;* which is accordingly done, in the words and figures following, to wit:

Replication to 1st, 3d, and 4th pleas.

In the circuit court of the United States.

"UNITED STATES OF AMERICA,
Northern district of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } In debt. Replication.

The court having overruled the plaintiffs demurrer to the first

plea, and ordered the plaintiffs to reply forthwith to said plea, thereupon the plaintiffs, as to the said plea of the said defendants *firstly* above pleaded, say that they ought not to be barred or precluded from having their said action against the said defendants as to the said sum of $338 06, because they say that, after the delivery of said bond, the amount of the duties due and owing to the plaintiff on account of the 682 bars of railroad iron was not ascertained to be the sum of $1,349 74, and no more, as the said defendants have above in their said plea in that behalf alleged. And this plaintiffs pray may be enquired of by the country, &c.

R. F. PAINE, *U. S. Att'y.*

And the court having overruled the plaintiff's demurrer to the third plea, and ordered the plaintiffs to reply forthwith to the said plea, thereupon the plaintiffs, as to the said plea of the said defendants thirdly above pleaded, say that they ought not to be barred or precluded from having their said action against the defendants,
26 because they say that, at the time of the commencement of this suit, the plaintiffs were not indebted to the defendants in the sum of $1,889 80 for money then and there had and received by the plaintiffs to and for the use of the defendants, in manner and form as in the said plea stated. And this the plaintiffs pray may be enquired of by the country, &c.

R. F. PAINE, *U. S. Attorney.*

And the plaintiffs, for a further replication to the said *third* plea, (leave of the court for that purpose being first had and obtained, according to the statute in such case made and provided,) say that they ought not to be barred or precluded from having or maintaining said action as to the said $1,889 80 in said plea, because the plaintiffs say that before the commencement of this suit said claim for money had and received was *not* submitted to the consideration of the accounting officer of the treasury of the United States, and was rejected in manner and form as in the said plea is alleged. And this the plaintiffs pray may be enquired of by the country, &c.

R. F. PAINE, *U. S. Attorney.*

And the plaintiffs for a further replication to the said *fourth* plea and ordered the plaintiffs to reply thereto forthwith; thereupon the said plaintiffs, as to the said plea by the defendants fourthly above pleaded, say that the plaintiffs ought not to be barred or precluded from having their said action against the said defendants for the said sum of $1,889 80 mentioned in said plea, because they say that the said defendants did *not*, on the 1st day of June, 1860, pay to the plaintiffs, to wit, at Sandusky, the said sum of $1,889 80, as is in said plea alleged. And this the plaintiffs pray may be enquired of by the country, &c.

R. F. PAINE, *U. S. Attorney.*

27 *Trial.*

And afterwards, to wit, on the 21st day of January, in the year of our Lord one thousand eight hundred and sixty-two, being at the said stated November term of said court, began and held on the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-one, came the parties, by their attorneys; and this cause coming on for trial upon the issue joined, and a jury being called came, to wit: Lorenzo A. Kelsey, Azariah Everett, Peter Thatcher, jr., John W. Allen, Martin B. Scott, John M. Hughes, Melancthon Barnett, Ansel Roberts, George B. Merwin, Samuel C. Green, Daniel Cleveland, and Lewis Gross, who were duly empannelled and sworn, the truth to speak upon the issues joined between the parties to this cause. And the testimony being closed, but the arguments of the counsel not being concluded, the court adjourned the jury until the next morning at nine o'clock.

And afterwards, to wit, on the twenty-second day of January, in the year last aforesaid, came again the parties, by their attorneys, and also came the jurors empannelled and sworn herein on the preceding day.

And the testimony and arguments of counsel being concluded, the said jurors, after receiving the charge of the court, retired to their room to deliberate upon their virdict, accompanied by a sworn officer of the court.

Verdict.

And afterwards, to wit, on the twenty-third of said January, in the year last aforesaid, came again the parties, by their attorneys, and also came again the jurors empannelled and sworn herein on Tuesday last; and the said jurors do now upon their said oaths say that upon all the issues joined between the parties they do find for the plaintiffs that the said three writings, obligatory, set forth in the plaintiffs declaration are the deeds of the said defendants, and that the plaintiffs have sustained damages, by reason of the breach of the condition of the said bond mentioned and set forth in the first count of said declaration, in the sum of fourteen hundred and eighty-three dollars and one cent, ($1,483 01;) and that the plaintiff has sustained damages, by reason of the breach of the condition of the bond set forth in the second count of the said declaration, in the sum of two thousand
28 and forty-six dollars and twenty-one cents, ($2,046 21;) and that plaintiff has sustained damages, by reason of the breach of the condition of said bond set forth in the third count of the declaration, in the sum of two thousand seven hundred and seventy-eight dollars and eighty-seven cents, ($2,778 87,) and doth assess the total damages sustained by the plaintiff, by the reason of the premises, to six thousand three hundred and eight dollars and nine cents, ($6,308 09.)

Motion for new trial.

Thereupon the defendants, by their counsel, for reasons contained

in their motion on file, move the court to set aside the said verdict and to grant a new trial in this cause, which motion is in the words and figures following, to wit:

Circuit court.

THE UNITED STATES,
v.
L. Q. RAWSON, *et. al.*

The defendants, by their counsel, move the court for a new trial n this action, and for causes show the following:

1. The court erred in holding G. S. Patterson to be a competent witness.
2. The court erred in permitting said Patterson to explain and contradict that portion of the receipt making an application of the money.
3. The court erred in charging the jury that the receipt of the draft for $2,500 was no payment.
4. The court erred in charging the jury that when the draft was converted into coin at par, it was still no payment unless actually applied by the collector to the discharge of duties.
5. The court erred in holding that the written agreement to apply the money to duties did not relate to and control the application after the draft was converted into coin.
6. The verdict is against the evidence.
7. The verdict is against the law.
8. The court erred in other respects.

HITCHCOCK, MASON & ESTEP,
Attorneys for Defendants.

29 *Motion for a new trial overruled.*

And afterwards, to wit, on the twenty-fifth day of January, in the year and at the term last aforesaid, this cause came on for hearing upon the defendants motion for a new trial, and was argued by counsel; whereupon it is considered by the court that said motion be and the same is hereby overruled.

It is therefore considered that the said plaintiff recover of the said defendants, L. Q. Rawson, B. Amsden, and James Moore, its debt aforesaid, twelve thousand three hundred and twenty-one dollars and twenty cents, ($12,321 20;) and it is further ordered that execution issue herein against the said defendants only for the said sum of six thousand three hundred and eight dollars and nine cents, ($6,308 09,) the damages aforesaid by the jury aforesaid assessed, and also for the costs of the said plaintiffs in this behalf expended, taxed to one hundred and sixty dollars and eighty-eight cents, ($160 88;) and interest is to be computed on said damages from the 21st day of January, 1862.

The defendants having on the trial of this cause excepted to certain

rulings of the court, come now and by their counsel tender their bill of exceptions, and pray that the same may be signed and sealed by the court, which is accordingly done, and the same is ordered to be made a part of the record in this case.

Said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States within and for the northern district of Ohio.

THE UNITED STATES
v.
L. Q. RAWSON, *et. al.* } Debt.

Be it remembered that on the trial of this cause, at the November term of the said court, A. D. 1861, the defendants gave in evidence, to maintain the issue on their part, the two several receipts marked *D* & *F*, hereto attached and made part hereof, signed Geo. S. Patterson, collector, with proof of the genuineness of the signature of said collector, and plaintiff having admitted in open court that the further sum of $4,000 had been paid to said Patterson as collector, on or about the 28th January, 1859, the defendants rested; and thereupon the said plaintiff to maintain the issue on its part called to the witness stand

30 George S. Patterson, who, being duly sworn, testified that he was collector of customs within and for the district of Sandusky, in said northern district, from May 8, 1857, to April, 1861. That during the time he was such collector, there was sent to his district for rewarehousing from the port of New York, the several packages or cargoes of railroad iron described in schedule A, hereto attached and made part hereof, entered and to be entered in the name of said L. Q. Rawson. That on the arrival of said iron in his district the defendants executed and delivered to him as such collector ten several bonds, each for the amount of duty payable upon said packages, respectively. That said bonds were numbered from one to ten inclusive; the amount and date of each bond appear on said schedule A. That said bonds were in form alike, differing only in date, time, and amount, so as to correspond with the duties on each package or cargo; and that, except as to the difference aforesaid, said bondsmen each like exhibit *B* hereto attached and made part hereof and which is a copy of bond No. 6 included in the suit. That on the 28th Jan'y, 1859, the defendants paid him $4,000, on receiving which payment he as such collector retired and cancelled bonds numbered 1, 2, & 4, amounting in the aggregate to $3,874 80.

That on the 13th July, 1859, the defendants paid to him as such collector $7,500 on said duties; that $5,000 of this sum was handed him in a draft on New York, which at the request of said Rawson, he had converted into coin before its application to the payment of said duties; that at that time he cancelled and retired four more of said bonds, to wit, bonds numbered 3, 5, 7, & 9. That the aggregate

amount of the seven bonds thus retired was $12,110 16, after deducting six per cent. from the value of the iron mentioned in bonds numbered 5 and 7, and on which the duties, at the time of giving the bonds, had been computed at 30 per cent. instead of 24 per cent. That the sum of $610 16 was still required to make full payment of said sum of $12,110 16. That one R. W. B. McClellan then paid him $2,500 in a draft on New York, a copy of which is hereto attached marked "C," and made part hereof. That there was an under-
31 standing between him and said Rawson that he should convert said draft into coin, apply sufficient thereof to discharge said sum of $610 16 required to fully pay said seven retired bonds, and that of the remainder he was to retain sufficient to discharge some fees and expenses occured and due him for fees in relation to said iron in taking care of the same, the amount of which was not ascertained, and to account for the balance on settlement upon the duties represented in and by bonds numbered 6, 7, and 10, now in suit.

That when he received said draft for $2,500 he deposited the same with Messrs. Barney & Durbin, his bankers in Sandusky, to be collected in coin at par without charge; that on the 28th July, 1859, he drew from said deposite so made with his bankers the sum of $1,500 in coin, but was unable to get the coin sooner on said draft; that he applied $610 16 of the amount to pay the residue due on said seven retired bonds and used the remainder for private purposes—leaving the $1,000 over and above the said sum of $1,500 in the possession of said bankers, where it still is subject to be withdrawn in coin at any time. The said witness further stated that he had not seen defendant after said 13 July, 1859; that he could not apply the residue of said $2,500, to wit, the sum of $1,889 84, because the defendants had never, at any time, filed any papers withdrawing said iron from warehouse; nor had they, at any time, withdrawn the same in the manner prescribed by law; nor had the defendants been to his office after said 13th July, 1859, to his knowledge, although frequently requested, by letter, to come and settle said duties; that said iron, by reason of the direction given the same at New York, was landed at Frémont, on the dock of the defendants; and that defendants, without his consent, and contrary to his express directions, removed the iron from the dock and used the same on the road of the Frémont and Indiana R. R. Company, to which company the iron belonged. The defendants objected to the competency of said witness to testify in regard to said payment of $2,500, because therein he was not indifferent between the parties; which objection the court overruled, and permitted the said witness to testify in relation to the
32 same; and thereupon, and while said witness was testifying in chief, the defendants objected to the witness testifying as to any arrangments made between the parties at or before the time of receiving said draft, tending to show a different application of the money than that expressed on the face of the receipt, on the ground that so much of the receipt as related to the application of the money was a contract and *and* could not be contradicted, varied, or changed by parol declarations made at or before that time; which objection

was overruled by the court; to which ruling of the court the defendants excepted. And thereupon, after the objection aforesaid, the witness did testify, as hereinbefore set forth. And thereupon, on cross-examination, said witness testified that said draft was paid him by said McClellan, at his office in Sandusky, on the 13th July, 1859; that he could not and did not recollect that anything was said at the time between him and said McClellan, or between him and said Rawson, about any claim for fees and expenses; that he could not recollect what was said at any time between him and defendant, Rawson, in relation to the settlement or amount of said fees and expenses, nor had he at any time presented an account for same. The plaintiff then introduced John Young, who was duly sworn, and testified that he was the successor of said Patterson, as collector of said port of Sandusky; that since his term of office commenced no application for withdrawal of said iron has been made by defendants to him, nor has any money been paid to him on said duties. He produced and identified a letter from defendant, Rawson, which was read by the district attorney to the jury, and a copy of which is hereto attached and made part hereof marked E.

And on cross-examination said witness testified that defendant, Rawson, called on him in May, 1861; said he had with him the receipts of Collector Patterson, and asked to have the amount not before applied of said $2,500 to be then applied on said duties, which he declined. And thereupon it was agreed between counsel that there should be deducted from bond No. 6 the sum of $337 56 to reduce the same to twenty-four per cent. on the value of the iron,
33 leaving the amount, in fact, due on the same $1,350 24 and interest, after maturity, and offered no further or other testimony.

Thereupon the defendants, to further maintain the issue on their part, called A. H. Miller as a witness, who, being sworn, testified that he was a banker, doing business in Frémont, and drew the draft for $2,500, a copy of which is hereto attached marked "C." That the same was payable in coin in New York; that the same had been paid; and also R. B. W. McClellan, who testified that, on the 9th July, 1859, he paid said Patterson, at his office in Sandusky, $7,500 on the duties, for which he took the receipt of said collector, a copy of which is hereto attached marked "F;" that said Patterson then told him that he had an arrangement with his bankers by which he could get the coin for sight drafts on New York; that $5,000 of the $7,500 was paid in such draft; that he then informed said Patterson that they could and would pay him $2,500 more in a day or two; that on the 11th July, 1859, said Patterson came to said Frémont, and that then said Rawson paid to said Patterson said draft for $2,500; and the said Patterson then gave the receipt marked D; that at the time nothing was said about a claim for fees and expenses due said Patterson, or the application of any part of said $2,500 to the payment of such fees and expenses that was heard by him, and that he did not hear all the conversation between Patterson and Rawson, and that he had paid to said Patterson certain fees required by him, and also the board of his son for the time he was in Frémont, purporting to

look after said iron, which he supposed was all the expenses of that kind to be paid, and gave no further testimony; and thereupon, it was agreed by the parties that if under the charge of the court, the payment claimed by defendants should be disallowed, the verdict should be for $6,308 09, and if allowed then it should be for $4,239 18.

Whereupon the court charged the jury, after explaining the nature of the issues presented by the pleadings, that it was competent for the government to show that the amount represented by the
34 $2,500 receipt was not paid in coin; that it was expressly provided by the act to provide for the better organization of the treasury, &c., &c., approved August 6, 1846, that all duties, taxes, &c., shall be paid in gold and silver coin only, or in treasury notes issued under the authority of the United States; that the object and intention of Congress, as derived from the whole tenor of the act, was to compel the payment of duties and dues in gold and silver and treasury notes, and that it could not lawfully be made in anything else, and that unless the payment was so made in coin or treasury notes it was no payment; and that if the collector, after receiving the draft, converted it into coin, it was still no payment, and could not be set up as such, unless, after being so converted into coin, it was actually applied by the collector to the payment of such duties, and the government was under no obligation to allow it; that it was no payment.

To which charge of the court the defendants excepted, and thereupon, after verdict, the defendants filed their motion for a new trial, for the reasons therein assigned, which was overruled by the court.

And inasmuch as the several matters hereinbefore set forth do not appear of record in said cause, the defendants, by their counsel, present this their bill of exceptions; and pray that it may be signe sealed, and made part of the record, in due form of law; and it is done accordingly.

H. V. WILLSON, [SEAL.]
One of the Judges of said Court.

EXHIBIT A.

Abstract of duties and merchandise imported into and warehoused at other districts, and transported to and rewarehoused at the district of Sandusky, Ohio, during the month ending , 18 .

Transported into the district of Sandusky.			Original importations.										
Date of entry.	By whom entered.	Name of vessel.	Port of entry.	Date of entry.	Name of importer.	Quantity.	Whence imported.	Description of goods, railroad iron.	No. of bond at New York.	No. of bond at Sandusky.	24 per cent.	30 per cent.	Total of each bond.
1859.				1857.		*Bars.*		*T.*					
Jan'y 15	L. Q. Rawson..	Liverpool.	New York...	Dec. 2	Bean & Co	825	London.	155 0 3 21	1,280	1	53.78	.....	1,290 72
" "	..... "	C. Griswold.....	.... "	" 31	.... " .... "	708	Liverpool. ..	130 0 1 15	1,277	2	45.15	.....	1,083 60
				1858.									
" "	..... "	Christina.....	.... "	Jan'y 26	.... " .... "	788	London.	150 2 3 18	1,278	3	105.94	.....	2,542 56
" "	..... "	.....do.....	... "	" "	.... " .... "	795	... "	154 18 0 9	"	"			
				1857.									
" "	..... "	Southampton....	.... "	Nov. 30	.... " .... "	1,015	.... "	180 0 2 8	1,279	4	62.52	.....	1,500 48
Feb'y. 4	..... "	Eagle.....	.... "	June 9	F. B. Coddington...	2,211	Bristol	452 16 2 3	1,468	5	.....	185 33	5,559 90
" "	..... "	B. D. Metcalf....	.... "	" 1	.... " .... "	682	Liverpool ...	141 15 1 14	1,465	6	.....	56.26	1,687 80
" "	..... "	Adams	.... "	" 15	.... " .... "	206	...do.	125 2 27 8	1,467	7	.....	16.77	503 10
" "	..... "	J. R. Keeler	.... "	Aug. 6	.... " .... "	1,486	London.	281 6 1 16	1,464	8	106 47	. .....	2,555 28
" "	..... "	Yorkshire.	... "	June 15	.... " .... "	448	Liverpool ...	87 1 3 0	1,466	9	35.10	.....	842 40
" 10	..... "	Liverpool	.... "	Dec. 11	C. W. Congdon.....	1,264	London	230 3 1 11	581	10	79.93	.....	1,918 32
												Total..	19,484 16

37 *Exhibit "B."*

Know all men by these presents that we, L. Q. Rawson, as principal, and B. Amsden and James Moore, as sureties, are held and firmly bound unto the United States in the sum of three thousand three hundred and seventy-four dollars, "3,374," to be paid to the United States; for the payment whereof, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents: as witness our hands and seals this fourth day of February, one thousand eight hundred and fifty-nine.

The condition of this obligation is such that if the above bounden principals, or either of them, or either of their heirs, executors, administrators, or assigns, shall on or before the expiration of three years, to be computed from the first day of June, 1857, being the date of the original importation of the goods, wares, and merchandise enumerated herein, well and truly pay, or cause to be paid, unto the collector of customs for the port of Sandusky for the time being, sixteen hundred and eighty-seven $\frac{80}{100}$ dollars, or the amount of duty to be ascertained as due and owing on goods, wares, and merchandising entered this day for rewarehousing by L. Q. Rawson, consisting of 682, six hundred and eighty-two, bars of R. R. iron, or shall on or before the expiration of the three years aforesaid, in the mode prescribed by law, withdraw the said goods, wares, or merchandise from the warehouse at the port of Sandusky, O., then this obligation to be void; otherwise to remain in full force and virtue.

L. Q. RAWSON. [SEAL.]
B. AMSDEN. [SEAL.]
JAMES MOORE. [SEAL.]

Sealed and delivered in the presence of—
CYRUS BRADLEY.

38

39 *Exhibit D.*

"Rec'd, Sandusky, O., July 9, 1859, of Doct. L. Q. Rawson, by the hand of R. W. B. McClelland, treasurer of F. and I. R. R. Co., seven thousand five hundred dollars, to apply on duties of R. R. iron for said road.

"GEO. S. PATTERSON,
"*Collector.*"

Exhibit F.

Rec'd Sandusky, O., of L. Q. Rawson, twenty-five hundred dollars, to apply on duties of R. R. iron for F. and I. R. R.

GEO. S. PATTERSON, *Collector.*

CUSTOM-HOUSE, *Sandusky, O., July* 11, '59.

1167

Exhibit C.

[$2,500.] BANKING-HOUSE OF BIRCHARD, MILLER & Co.,
Frémont, Sandusky Co., Ohio, July 11, 1859.

Pay to the order of Geo. S. Patterson, esq., twenty-five hundred dollars.

BIRCHARD, MILLER & CO.

To CARPENTER & VERMILYE,
44 *Wall st., New York.*

No. 3184. Endorsed: "Geo. S. Patterson."

Exhibit E.

"FRÉMONT, O., *June* 14, 1861.

"DR. SIR: Will you make the remittance of three hundred thirty-seven $\frac{56}{100}$ dollars for overcharge of duties?

"I have written to Mr. Patterson requesting him to hand you, to be credited on duties against me, the $1,889 80 remaining in his hands. I go to New York to-day and expect to return in eight or ten days, and hope then to be in funds to pay the balance. I hope you will keep the matter in *statu quo* till my return if consistent.

"Yours,

"L. Q. RAWSON.

"JOHN YOUNG, esq., *Collector, &c.*"

41 And whereas afterwards, on the fourth day of February, in the year of our Lord one thousand eight hundred and sixty-two, was filed in the clerk's office of said court a bond on writ of error in the words and figures following, to wit:

Bond on writ of error.

In United States circuit court.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

THE UNITED STATES OF AMERICA
vs.
L. Q. RAWSON, B. AMSDEN, and JAMES MOORE. } No. 991. Bond in error.

Know all men by these presents that we, L. Q. Rawson, B. Amsden, and James Moore, as principals, and C. W. Foster and S. Carlin, as sureties, are held and firmly bound unto the United States of America in the sum of twelve thousand six hundred and sixteen dollars and eighteen cents, ($12,616 18,) to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of

our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 1st day of February, anno Domini 1862.

Whereas the above-named L. Q. Rawson, B. Amsden, and James Moore have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the seventh circuit and northern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named L. Q. Rawson, B. Amsden, and James Moore shall prosecute their said writ of error to effect and answer all debt, damages, and costs, if the shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

L. Q. RAWSON. [SEAL.]
B. AMSDEN. [SEAL.]
JAMES MOORE. [SEAL.]
C. W. FOSTER. [SEAL.]
S. CARLIN. [SEAL.]

Sealed and delivered in the presence of—
OSCAR BALL.
R. W. B. MCLELLAN.

42 I believe the sureties in the above bond are good for the amount named, and I hereby approve the same.

H. V. WILLSON, *U. S. Judge.*

February 4, 1862.

And afterwards, to wit, on the said fourth day of February, in the year of our Lord one thousand eight hundred and sixty-two, the said L. Q. Rawson, B. Amsden, and James Moore produced to the court here, and by their attorneys filed in the clerk's office of said circuit court, a writ of error in the words and figures following, to wit:

43 SUPREME COURT OF THE UNITED STATES,
United States of America, ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the seventh circuit and northern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court, before you, between the United States of America, plaintiff, and L. Q. Rawson, B. Amsden, and James Moore, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all

things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this fourth [SEAL.] day of February, in the year of our Lord on thousand eight hundred and sixty-two, and of the independence of the United States of America the eighty-sixth.

Attest: F. W. GREEN, *Clerk.*

44 L. Q. RAWSON, B. AMSDEN, and JAMES MOORE
vs.
THE UNITED STATES OF AMERICA.
No. 991. Writ of error.—(Original.) Returnable 1st Monday December, 1862.

A copy of the within writ of error lodged, in pursuance of the statute of the United States, for the above-named United States of America, defendants in error, by the attorneys for plaintiffs in error, February 4, 1862.

Attest: F. W. GREEN, *Clerk.*

45 THE UNITED STATES OF AMERICA,
Northern District of Ohio.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 1st Monday in the month of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and the northern district of Ohio, wherein L. Q. Rawson, B. Amsden, and James Moore are plaintiffs in error, and the United States of America are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Hiram V. Willson, district judge, and one of the judges of said circuit court, at Cleveland, [SEAL.] this 4th day of February, anno Domini 1862, and in the 86th year of the independence of the United States of America.

H. V. WILLSON, [SEAL.]
One of the Judges of said Circuit Court.

Attest: F. W. GREEN, *Clerk.*

46 L. Q. RAWSON, B. AMSDEN, and JAMES MOORE *vs.* THE UNITED STATES OF AMERICA. } No. 991. Citation.

Northern District of Ohio:

I acknowledge service of a copy of the within citation for the United States of America, defendant in error. Feb'y 4, 1862.

R. F. PAINE, *District Attorney.*

47 UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Frederick W. Green, clerk of the circuit court of the United States for the seventh circuit and northern district of Ohio, do hereby certify that the foregoing is a true copy of the record and proceedings in the cause in said court, wherein the United States of America is plaintiff, and L. Q. Rawson, B. Amsden, and James Moore are defendants.

Witness my official signature and the seal of said circuit court, at Cleveland, in said district, this first day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States of America the 87th.

[SEAL.]

F. W. GREEN, *Clerk.*

48 L. Q. RAWSON *and al.* *vs.* THE UNITED STATES. } Petition in error.

The plaintiffs, L. Q. Rawson, B. Amsden, and James Moore, by their counsel, made the following assignment of errors on the foregoing record, to wit:

1. The court erred in holding G. S. Patterson to be a competent witness.

2. The court erred in permitting said Patterson to explain and contradict that portion of the receipt making an application of the money.

3. The court erred in chargeing the jury that the receipt of the draft for $2,500 was no payment.

4. The court erred in chargeing the jury that when the draft was converted into coin at par, it was still no payment, unless actually applied by the collector to the discharge of the bond or debt.

5. The court erred in holding that the written agreement to apply the money to duties did not relate to and control the application after the draft was converted into coin.

6. The verdict is against the law.

HITCHCOCK, MASON & ESTEP,
Att'ys for Pl'ffs in Error.

1173

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1863.

No. 170.

L. Q. Rawson, B. Amsden, and James Moore, plaintiffs in error, *vs.* The United States.	In error to the circuit court of the United States for the northern district of Ohio.

EDWARD BATES,
Attorney General.
TITIAN J. COFFEY,
Assistant Attorney General.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1863.

No. 170.

L. Q. Rawson, B. Amsden, and James Moore, plaintiffs in error, *vs.* The United States.	In error to the circuit court of the United States for the northern district of Ohio.

STATEMENT AND ARGUMENT FOR THE DEFENDANT IN ERROR.

The United States brought three actions of debt in the circuit court of the United States for the northern district of Ohio, against L. Q. Rawson, B. Amsden, and James Moore, on three bonds, and declared therein as follows:

In the first action, on a bond executed by said defendants to the plaintiff, dated the 4th of February, A. D. 1859, in the penalty of $3,374, conditioned for the payment, on or before the expiration of three years from the first day of June, 1857, (the date of the original importation,) to the collector at Sandusky, of the sum of $1,687 80, or the amount of duty to be ascertained as due and owing on 682 bars of railroad iron, then (4th February, 1859) entered for rewarehousing by Rawson; or that the defendants should, on or before the expiration of the said three years, in the mode prescribed by law, withdraw the said goods, &c., from the warehouse at the port of Sandusky. And the declaration averred that the defendants did not, within the three years named, pay the said sum of $1,687 80, or the amount of duty ascertained as due and owing on the said goods, &c.; nor did they, before the expiration of the said three years, withdraw the said goods, &c.

In the second action, plaintiff declared on a bond of defendants of like form, dated 9th February, 1859, in the sum of $3,836 64, conditioned for the payment, within three years from the 11th December, 1857, of $1,918 32, or amount of duty to be ascertained, &c., on 1,264 bars of railroad iron, or within the said three years withdraw the same, &c.; with the same averment of non-performance as above stated.

In the third action, plaintiff declared on a bond of defendants in like form, dated 4th February, 1859, in the sum of $5,110 56, with condition for the payment, within three years from the sixth of August, 1857, of $2,555 28, or amount of duty to be ascertained, &c., on 1,486 bars of railroad iron, or within the said three years withdraw the same, &c., with the like averment of non-performance.

The court afterwards consolidated the three actions into one action, the declarations to stand for three different counts therein. And the issues, as finally formed, may be briefly stated as follows:

1st. To first count defendants pleaded that the amount of duties due plaintiff on said 682 bars of railroad iron was $1,349 74, and not $1,687 80, being $338 06 less than the amount claimed; which plaintiff, by replication, denied.

2d. To second count defendants pleaded payment to the collector of the sum of $1,982 32 therein claimed which plaintiff, by replication, denied.

3d. To all the counts defendants pleaded, that although they owed on said bonds $5,823 34, yet that there was due them from plaintiff $1,889 80, which sum they offered to set off, and their claim for which the accounting officers of the treasury had rejected. To which plea the plaintiff replied, by denying that he owed the defendants the sum of $1,889 80.

4th. And further, the defendants pleaded that they had paid the plaintiff the sum of $1,889 80, part of the sums claimed; which plaintiff, by replication, denied.

The issue made by the first plea was disposed of, on the trial, by an agreement of counsel to deduct from the bond set forth in the first count the sum of $337 56.—(Record, page 25.)

In answer to the plaintiff's cause of action the defendants gave in evidence two receipts of the collector at Sandusky to them—one for the sum of $7,500, and one for the sum of $2,500; and the plaintiff admitted the payment of the further sum of $4,000 to the collector.

No question was made by the plaintiff of the correctness and validity of the receipt for $7,500 and the payment of $4,000, in discharge of duties owing by the defendants on railroad iron and secured by their bonds; but the plaintiff denied the correctness and validity of the receipt for $2,500, as evidence of the payment of that amount on the bonds given by the defendants, and, to destroy its effect, introduced the evidence embraced in the bill of exceptions, which may be thus briefly stated:

The defendants had given ten bonds, alike in form, to secure the payment of duties on warehoused railroad iron, (of which the three in suit were a part,) amounting in the aggregate to $19,484 16. On the 28th January, 1859, they paid thereon $4,000; whereupon the collector retired and cancelled bonds No's. 1, 2, and 4, in all amounting to $3,874 80. On the 13th July, 1859, they paid the collector $7,500 on said duties, of which $5,000 was handed him in a draft on New York, which he had converted into coin before its application to the payment of the duties, and he then cancelled and retired four more of the bonds, viz: Nos. 3, 5, 7, and 9. The aggregate of the seven bonds thus retired (after making certain deductions) was $12,110 16; leaving still due on them $610 16. This sum and the three bonds in suit Nos. 6, 8, and 10, were yet unpaid.

On the 11th July, 1859, the defendant Rawson or his agent, McClellan, gave Geo. S. Patterson, the collector, a draft of that date, drawn by Birchard Miller & Co. on Carpenter & Vermilye, of New York, to the order of Patterson, for $2,500; and Patterson gave Raw-

son a receipt for that sum, "to apply on duties of R. R. iron for F. & I. R. R.," being the receipt in question.—(Exhibit F, page 28 of Record.)

Patterson, the collector, who testified under exception, states (page 24) "that there was an understanding between him and said Rawson that he should convert said draft into coin, apply sufficient thereof to discharge said sum of $610 16 required to fully pay said seven retired bonds, *and that of the remainder he was to retain sufficient to discharge some fees and expenses incurred and due him for fees in relation to said iron in taking care of the same, the amount of which was not ascertained, and to account for the balance on settlement upon the duties represented in and by bonds Nos.* 6, 7, *and* 10, *now in suit;* that when he received said draft for $2,500, he deposited the same with Messrs. Barney & Durbin, his bankers, in Sandusky, *to be collected* in coin at par without charge; that on the 28th of July 1859, he drew from said deposit so made with his bankers the sum of $1,500 in coin, but was unable to get the coin sooner on said draft; that he applied $610,16 of the amount to pay the residue due on said seven retired bonds, *and used the remainder for private purposes*, leaving the $1,000, over and above the said sum of $1,500, in the possession of said bankers, where it is still subject to be drawn in coin at any time; that he could not apply the residue of said $2,500, to wit: the sum of $1,889,84, because the defendants had never, at any time, filed any papers withdrawing said iron from warehouse, nor had they at any time withdrawn the same in the manner prescribed by law, nor had the defendants been to his office after said 13th July, 1859, to his knowledge, although frequently requested, by letter, to come and settle said duties; that said iron, by reason of the direction given the same at New York, was landed at Frémont, on the dock of the defendants, and that defendants, without his consent, and contrary to his express directions, removed the iron from the dock, and used the same on the road of the Frémont and Indiana R. R. Company, to which company the iron belonged."

It was further proved by John Young, the collector who succeeded Patterson, that in May, 1861, the defendant Rawson asked him that the amount of the $2,500 not before applied should be then applied on the said duties; which the collector declined to do. And by letter to the collector of 14th June, 1861, Rawson stated that he had written to Patterson, requesting him to hand the collector the $1,889 80 remaining in his hands, *to be credited on duties against him*, (Rawson.)

The verdict, under the rulings of the court, being in favor of the defendants, plaintiffs in error here ask that the judgment of that court be reversed, for the following reasons :

1st. That the court erred in holding G. S. Patterson to be a competent witness.

2d. That the court erred in permitting said Patterson to explain and contradict that portion of the receipt making an application of the money.

3d. That the court erred in charging the jury that the receipt of the draft for $2,500 was no payment.

4th. That the court erred in charging the jury that, when the draft was converted into coin at par, it was still no payment, unless actu-

ally applied by the collector to the discharge of the bond or debt.

5th. The court erred in holding that the written agreement to apply the money to duties did not relate to and control the application after the draft was converted into coin.

I. The first question is as to the competency of Patterson as a witness for the plaintiff.

This court has repeatedly held that the rules of evidence prescribed by the laws of a State are rules of decision for the United States courts while sitting within the limits of such State, within the meaning and subject to the exception contained in the 34th section of the judiciary act, (1 St., 92.).—Vance *vs.* Campbell *et al.*, 1 Black, 427 ; Haushurcht *vs.* Claypool, *ibid*, 431 ; Sims *vs.* Hundley, 6 How., 1 ; McNeil *vs.* Holbrook, 12 Pet., 84 ; Wright *vs.* Bates, 2 Black, 535.

The 310th section of the code of civil procedure of Ohio provides that "No person shall be disqualified as a witness in any civil action or proceeding by reason of his interest in the event of the same, as a party or otherwise, or by reason of his conviction of a crime ; but such interest or conviction may be shown for the purpose of affecting his credibility."

If Patterson had such an interest in the event of the suit as, at common law, would render him incompetent as a witness for the plaintiff, that incompetency is, of course, removed by the Ohio statute just cited. On that ground, therefore, the exception is not well taken.

But even without the statute, he was a competent witness; for, if he had an interest in the plaintiff's recovery, it was balanced by an equal interest on the side of the defendants. If the recovery by the plaintiff of the amount in dispute in this suit relieves him from liability to the plaintiff on his bond as collector, it also establishes against him a precisely equal liability to the defendants for that amount. And his interest being thus in *equilibrio*, he is just as competent as if he was entirely disinterested.

II. The 2d, 3d, 4th and 5th assignments of error may be considered as presenting but a single controlling question, viz :

Did the delivery of the check for $2,500 to the collector by the defendants, under the circumstances stated in the testimony, with the subsequent acts of the collector and the defendants in relation thereto, amount to a payment of duties binding on the United States under its laws ?

If these facts did not amount to such legal payment, then the fact that a receipt was given by the collector cannot make the payment valid. Nothing can be better settled than that a receipt of hand, acknowledging the payment of money, like a verbal admission of payment, is only *prima facia* evidence of it, and may be rebutted.—(Best

1179

on Pres., 187; 1 Greenl. Ev., arts. 212, 305.) It is not only impeachable for fraud, but any mistake may be shown, and so may any erroneous or false statement in it, though designed by the parties; in a word, it may always be contradicted, varied, or explained by oral testimony, as will abundantly appear by the cases, 1 Phil. on Ev., 475. If, therefore, the written acknowledgment of the collector that he received $2,500 to apply on duties was not true, it was perfectly competent for the court not only to admit evidence of its falsity, but to hold that it did not operate to control the application of the money called for by the draft to the payment of the duties, against the evidence that the amount of the money in coin was not, in fact, so applied.

The acknowledgment that the $2,500 was received "to apply on duties," was not, as the plaintiffs in error suppose, "a written agreement so to apply it." It was a mere statement of the purpose to which the money was to be applied, by way of designation. But even if it amounted to an agreement of the collector so to apply the money, still, if not so applied in fact, such agreement could not bind the United States. The collector was an agent of the government created by law, and having certain powers and duties specified and limited by law, which powers and duties with their limitations the defendants were bound to know.—Johnson *vs.* United States, 5 Mason, 440, 441, and cases cited. If the collector had legal power to receive payment of duties in a check on New York, then the receipt of that check amounted to a payment of the duties, and, *eo instanti*, discharged the obligation of the defendants, without any further act of the collector. But if the collector had no legal power to receive such check as payment, then the United States could not be bound by any agreement made by him with the defendants to do some future act which might be necessary to make the payment legal and valid. Such an agreement might bind the agent as made without the scope of his authority, but it could not bind his principal. The question therefore, which we have stated as the controlling one in the case, is in no manner affected or modified by the subordinate question of the effect of the receipt, since the effect of the receipt in discharging the defendants is involved in, and dependent on, the question whether the delivery of the check, under the circumstances in evidence, amounted to a legal payment of duties in discharge of the defendants' obligation.

Waiving, then, any further separate consideration of the subordinate points presented by the 2d and 5th assignments of error, and assuming them to be controlled by the main question stated, we proceed to its consideration:

We affirm that the delivery of the check on New York for $2,500 to the collector, considered either by itself, or in connexion with the attendant and subsequent facts, was not a lawful payment of duties so as to discharge the obligation of the defendants on their bonds.

The act of the 6th August, 1846, to establish a warehousing system, &c., (9 Stat., 53, Bright. Dig., 385, cl. 282,) provides, "that on and after the day this act goes into operation, the duties on all im-

ported goods, wares, and merchandise shall be paid in cash," with the proviso that in cases of failure or neglect to pay the duties within the period allowed by law to the importer to make entry thereof, or wherever entry should be made for warehousing them, the collector should take possession of and deposit them in the public stores, there to be kept, &c., subject at all times to the order of the owner, importer, consignee or agent," upon payment of the proper duties and expenses, to be ascertained on due entry thereof for warehousing, and to be secured by a bond of the owner, &c., with surety or sureties to the satisfaction of the collector, in double the amount of the said duties, and in such form as the Secretary of the Treasury shall prescribe, &c.

The 18th section of the act of same date, (6th August 1846,) chap. 90, entitled "An act to provide for the better organization of the treasury, and for the collection, safekeeping, transfer, and disbursement of the public revenue," (9 Stat., 59,) enacts :

"That on the first day of January, in the year 1847, and thereafter, all duties, taxes, sales of public lands, debts and sums of money accruing or becoming due to the United States, and also all sums due for postages or otherwise to the General Post Office Department, shall be paid in gold or silver coin only, or in treasury notes issued under the authority of the United States: *Provided*, That the Secretary of the Treasury shall publish monthly in two newspapers at the city of Washington the amount of specie at the several places of deposit, the amount of treasury notes or drafts issued, and the amount outstanding on the last day of each month."

The 2d section of the act of 31st August, 1852, (10 Stat., 98,) provides that—

"No gold or silver other than coin of standard fineness of the United States, or foreign coin, in the manner prescribed by existing laws, shall be receivable in payment of dues to the United States."

Without stopping to inquire what constitutes a payment of duties "in cash" within the meaning of the warehousing act, it is clear that the 18th section of the act of 1846, chap. 90, above quoted, explicitly requires duties to be paid in gold or silver coin only, or in United States treasury notes. No money in any other form could possibly be received in payment of duties without violation of this provision ; neither could any *order* for money in any form be so received, unless actually reduced to coin or treasury notes, and in *that form* paid to the collector, when payment would be effected, not by the receipt of the order, but by the receipt of the coin or treasury notes, for which the order called.

The plain purpose of the whole act is to prohibit the use of any form of individual or corporate credit in payment of the public dues. A check is an order for the payment of money, and whether it be payable in coin or not, its whole value rests in credit. If it could be lawfully received as payment, so also could an ordinary bank note; and if it should prove to be worthless, the loss would fall on the United States, and not on the collector, for he could not be held liable for the loss which resulted from his lawful acts. A construction, therefore, which would sustain as lawful payment, the delivery

of a check on New York to a collector at Sandusky, no matter how solvent it might be, would completely defeat both the letter and spirit of the act. Whether wisely or not, Congress intended to place the financial operations of the government on the basis of gold and silver coin, and to allow no substitution of mere credit for that basis, except so far as the credit of the government itself might be occasionally substituted. Hence the act created new and convenient places of deposit throughout the country, and authorized new officers to be appointed to receive and keep safely the public money, and it was made felony for any officer charged with the safekeeping, transfer, and disbursement of public money, to convert it to his own use in any way, or to deposit it in any bank, or exchange it for other funds, except as allowed by the act. In view of the provisions of this act, it is difficult to see how the delivery of the check for $2,500 to collector Patterson, can be regarded as a valid payment on the bonds.

But if it be contended that the facts, which attended and followed the delivery of the check, show an actual conversion of the amount it called for to the use of the government, so as to constitute a lawful payment, we answer :

1st. That those facts show that the amount of the check for which credit is now claimed, never did reach the hands of the collector in coin, and

2d. That the check was not delivered by the defendants as payment on the bonds, but with the understanding that the collector, after converting it into coin and applying a part of it to discharge the $610 16 due on the seven retired bonds, should retain out of it the amount of certain unsettled personal charges and expenses, and then account, on settlement, for the residue upon the duties secured by the three unpaid bonds.

Patterson states that he deposited the check with his bankers for collection. Whether it was ever paid in coin does not appear ; but he afterwards drew $1,500 from his bankers in coin, of which he applied $610 16 on the retired bonds, and used the remainder for private purposes. The residue of the amount of the check, $1,000, he never drew from his bankers. No settlement was ever made between Patterson and the defendants ; and therefore they never reached the point at which the portion of the check that was to be applied on the bonds was actually ascertained and so applied. That both the collector and the defendants understood that something more was to be done to discharge the defendants than the mere delivery of the check is shown by the language of the collector's receipt—"to apply on duties"—which implies the performance of some future act ; and that such future act was not in fact performed, is shown not only by the collector's testimony, but by the request of Rawson to Collector Young in May, 1861, to apply the amount of the $2,500 not before applied on the said duties ; and by Rawson's letter of 14th June, 1861, to the collector, to the same effect.

No portion of the proceeds of the check, therefore, ever reached the hands of the collector, (except the $610 16 referred to) in such

form as to impose on him the lawful duty to apply it in discharge of the bonds. For it cannot be said that even the residue of the $1,500 in coin which he drew from his bankers, after applying $610 16 as above stated, was in his hands, as a public officer, legally applicable to the public debt of the defendants, since he held it by agreement, subject to a private claim, to be ascertained by a subsequent settlement. Until that settlement it could not be known how much, if any, of it was left for payment of duties. Even an actual payment in coin, subject to such a condition, would not be a legal payment of duties; much less can the delivery of a check to be afterwards converted into coin, with such condition, be a legal payment.

In truth, it was a transaction in which the private business of the collector and the defendants was mingled with the performance of a public official duty; and in which the defendants made the collector their agent for certain purposes which took precedence of his official action. In so doing they acted at their own peril; and, if the collector failed to serve them with fidelity, the loss must be theirs, and cannot be transferred to the United States.

If these views in support of the ruling of the circuit court in this case need the sanction of authority, it is found in the case of The United States *vs.* Williams *et al.*, Ware's Rep., 173, decided by Judge Ware in the United States district court of Maine, and affirmed by Justice Story, under the name of Johnson *et al. vs.* the United States, 5 Mason, 425, wherein both of these learned judges vindicate the principles above stated in language directly applicable to the present case. That case was an action of debt by the United States on a bond for duties in the usual form. The defence was, that the collector took a check or checks on a bank in payment thereof, and *cancelled and delivered* up the bond to the defendants, with his receipt "in full" thereof indorsed on it. The collector afterwards returned the check to the defendants, and took their notes therefor. It was held—

1. That the cancellation was void, and that the bond might be declared on as a subsisting deed.

2. That the collector, under the 74th section of the act of 1799, (1 Stat., 680,) could not receive anything but money of the United States, or foreign gold or silver coin made current, in payment of duties. If he receives a check on a bank, it is at his own peril; and if the check is not paid, the bond is not discharged; *a fortiori*, is not discharged by receipt of a memorandum check.

3. That the collector cannot bind the United States by acts beyond or contrary to the authority given him by its laws; and,

4. That the receipt of the collector, although *prima facie* evidence, is not conclusive of the fact of payment.

The authority of this case, decided on a statute far less stringent than the 18th section of the act of 1846, is so pointed and conclusive in support of the decision of the circuit court in this case, that we deem no further citations necessary.

EDWARD BATES,
Attorney General.
TITIAN J. COFFEY,
Assistant Attorney General.